

This letter discusses the manner in which food is taxed. See 86 Ill. Adm. Code 130.310. (This is a GIL.)

August 2, 2004

Dear Xxxxx:

This letter is in response to your letter dated September 19, 2003, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

I am a tax researcher for ABC. We are currently researching the taxability of food and drink items in grocery vs. restaurant sales, and I hope you can assist me with the questions that follow, or direct me to an appropriate source.

I understand that an establishment with more than 50% prepared food sales may still sell food at the low rate if it segregates such sales from facilities for on-premise consumption and keeps separate records. Can you confirm that my understanding is correct?

With regard to such segregated low-rate sales, such as in delicatessens and other businesses that have on- and off-premise food sales, I have questions about whether the following items constitute bulk or grocery items qualified for the low rate of tax:

1. Deli sales such as cold cuts and cheese, sliced and/or repackaged by the seller but sold without utensils.

- 1.a. Party platters or deli platters.

2. Cold salads such as egg, macaroni, potato salad or cole slaw, sold by weight or volume. Is there a threshold below which a quantity would be considered an individual serving, even if sold without utensils, and taxed at the high rate? For example, some states tax amounts less than one pint or less than 8 ounces.

3. Bakery goods such as rolls, muffins, bagels and doughnuts, sold by weight or quantity. Is there a number of items at which an individual serving, such as one doughnut, becomes a bulk sale? E.g. many states hold that 6 items or more is a bulk sale.

4. Sandwiches - are prepackaged sandwiches considered prepared food whether or not they are heated at the point of sale? What if they are frozen? Does it make a difference if there is a microwave available for customer use?

5. Ice cream - is any prepackaged quantity of ice cream eligible for the low rate? Or is there a minimum size, such as a pint or quart, that is eligible for the low rate? Does it matter whether the seller hand-packs a bulk-size container for a customer on request, or whether the container was prepackaged and stored for general sales?

6. Beverages such as juice and milk in sealed containers - again the question is whether a particular size container, such as a pint, is considered an individual serving.

Finally I have a question about some charges a restaurant may impose other than for meals and drinks. Can you tell me if the following are taxable:

1. Delivery charge

2. Coat check charge

3. Parking fee

4. Meeting or banquet room - food served by the provider of the room, vs. room provided with no food service.

Thank you very much for your attention and assistance,

The Department's regulation for food, drugs, medicines and medical appliances is set forth at 86 Ill. Adm. Code 130.310. The Department's letters related to questions about food are available on the web site. The Department is currently reviewing the food regulation and may propose changes it.

The regulation covering delivery charges is set forth at 86 Ill. Adm. Code 130.415. The Department does not believe that the provision (or procurement) of parking or coat check services is part of the cost of providing meals. As a result, these costs are not includable in the retailer's gross receipts if they are separately itemized on the invoice and such itemized charges are initialed by the customer.

If your client only rents a meeting room to a customer (no food or beverage sales are involved), the room rental charge is not subject to tax. Because no tangible personal property has been transferred, no tax is due.

I hope this information is helpful. If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
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